Parental Relocation (Post Judgment)

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Section 1

Motion to Enjoin (Post Judgment)

A Guide to Resources in the Law Library

SCOPE: Bibliographic sources relating to a post judgment decision by a parent to relocate.

DEFINITIONS:

- "In summary, we hold, therefore, that a custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, and (2) the proposed location is reasonable in light of that purpose. Once the custodial parent has made such a prima facie showing, the burden shifts to the noncustodial parent to prove, by a preponderance of the evidence, that the relocation would not be in the best interests of the child." Ireland v. Ireland, 246 Conn. 413, 428, 717 A.2d 676 (1998).
- **Best Interest of the child standard in relocation cases**: "the factors advanced by the New York Court of Appeals in Tropea v. Tropea, 87 N.Y.2d 727, 665 N.E.2d 145, 642 N.Y.S.2d 575 (1996) . . . . are: '[E]ach parent's reasons for seeking or opposing the move, the quality of the relationships between the child and the custodial and noncustodial parents, the impact of the move on the quantity and quality of the child's future contact with the noncustodial parent, the degree to which the custodial parent's and child's life may be enhanced economically, emotionally and educationally by the move, and the feasibility of preserving the relationship between the noncustodial parent and child through suitable visitation arrangements.' Id., 740-41. The court also considered relevant 'the negative impact, if any, from continued or exacerbated hostility between the custodial and noncustodial parents, and the effect that the move may have on any extended family relationships.' Id., 740." Ireland v. Ireland, 246 Conn. 413, 431-432, 717 A.2d 676 (1998).

STATUTES:

- CONN. GEN. STATS. (2003).
  § 46b-56(b). "In making or modifying any order with respect to custody or visitation, the court shall (1) be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interests of the child, and (2) consider whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b."

RECORDS & BRIEFS:

- CONNECTICUT APPELLATE COURT RECORDS AND BRIEFS (January 2001).
  McGinty v. McGinty, 66 Conn. App. 35 (2001).
  Motion to enjoin - Post Judgment

Memorandum of decision (Trial Court)

COURT CASES

- Bretherton v. Bretherton, 72 Conn. App. 528, 538-539, 805 A.2d 766 (2002). "There is nothing in the language of *Ireland* to suggest that the burden shifting scheme, in particular with respect to the custodial parent's initial burden of proof, supercedes the standard of the best interest of the child. Rather, our Supreme Court explicitly provided that the salient inquiry remains that of the best interest of the child involved. Therefore, the failure of the custodial parent to meet his or her initial burden cannot in and of itself end the matter in relocation cases. To predicate a decision whether to permit relocation on the basis of parental conduct only, even when that conduct appears unreasonable or illegitimate, would be to ignore the needs of the child and to reduce the court's inquiry to assessing the parents' action only."
- Ford v. Ford, 68 Conn. App. 173, 184, 789 A.2d 1104 (2002). "We, therefore, hold that that burden-shifting scheme in *Ireland*, and the additional *Tropea* factors, do not pertain to relocation issues that arise at the initial judgment for the dissolution of marriage. Rather, we find that Ireland is limited to postjudgment relocation cases. We conclude that because the Ireland court did not expand its holding to affect all relocation matters, relocation issues that arise at the initial judgment for the dissolution of marriage continue to be governed by the standard of the best interest of the child as set forth in § 46b-56. While the Ireland factors may be considered as "best interest factors" and give guidance to the trial court, they are not mandatory or exclusive in the judgment context."
- Barzetti v. Marucci, 66 Conn. App. 802, 807, 786 A.2d 432 (2001). "We therefore conclude that the prima facie showing explained by the Supreme Court in *Ireland* must be made by a fair preponderance of the evidence before the burden shifts to the other parent to prove that relocation would not be in the best interest of the child."
- Sczerkowski v. Karmelowicz, 60 Conn. App. 429, 433, 759 A.2d 1050 (2000). "Although the defendant claims that the court was required to find that a substantial change of circumstances existed before modifying the plaintiff's visitation, this is a misreading of our law. The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred. Rather, the standard the court applies is that of the best interest of the child . . . . Our independent review of the record discloses that the court applied the best interest of the child standard in ruling as it did and that its decision does not constitute an abuse of discretion."
- Ireland v. Ireland, 246 Conn. 413, 440-441, 717 A.2d 676 (1998). "To determine the child's best interests, the court should consider the factors set forth in part II of this opinion, giving each relevant factor the appropriate weight under the circumstances of this case, and being mindful that the list is not exclusive."

TEXTS & TREATISES

- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE, FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
  § 44.11. Relocation of the child's residence

COMPILER: Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. EMAIL

Figure 1 Motion to enjoin - Post Judgment

D.N. FA 96 0149771 S	:	SUPERIOR COURT
ELLEN MC GINTY	:	J.D. OF
STAMFORD/NORWALK		
V.	:	AT STAMFORD
JOHN MC GINTY	:	MAY 27, 1998

MOTION TO ENJOIN - POST JUDGMENT

The defendant, by and through his attorneys, hereby respectfully moves that this court enjoin the plaintiff from removing the minor child from the New Canaan/Stamford area for the following reasons:

l. The parties were divorced on November 22, 1996 at which time their Separation Agreement was incorporated by reference into the final judgment.

2. Paragraph 4.10 of said Agreement states, ". . The Wife shall not relocate until agreement of the parties or order of the Superior Court of the State of Connecticut."

3. On or about May 15, 1998, the defendant received a letter from the plaintiff stating her intention to relocate out of state with the parties minor son in August of 1998.

4. The defendant does not consent to the relocation of the minor child.

WHEREFORE, the defendant moves that this honorable court enjoin the plaintiff from removing the minor child from the New Canaan/Stamford area until further order of this court.

ORAL ARGUMENT REQUESTED
TESTIMONY IS REQUIRED

THE DEFENDANT

_____

Name
Address
Telephone number Juris

ORDER

The foregoing motion having been heard, it is hereby ORDERED:

GRANTED/DENIED.

_____
Judge/ Ass't Clerk

CERTIFICATION

This is to certify that a copy of the foregoing was mailed on this date to the following counsel and pro se parties of record.

Name
Address

_____
Name

Figure 2 Memorandum of decision (Trial court)

D.N. FA 96 0149771 (SUPERIOR COURT

ELLEN McGINTY (STAMFORD/NORWALK

JUDICIAL

VS

JOHN McGINTY (SEPTEMBER 4, 1998

MEMORANDUM OF DECISION
de: DEFENDANT'S MOTION TO ENJOIN POST JUDGMENT (#160)

The parties' marriage was dissolved by judgment entered November 22, 1996 after an uncontested hearing. The parties' separation agreement (117) was incorporated in the judgment. It provided, in Article IV, Paragraph 4.1,

> "The parties shall have joint custody of the minor child, which child shall make his primary residence with the mother, subject to rights of reasonable, liberal and flexible visitation of the father..."

The agreement then defined the visitation in the succeeding nine paragraphs number (1) through (3)(f).

The plaintiff invoked paragraph 4.10 which required her to give 90 days notice by certified mail to the defendant of her intention to move to New Jersey, (Defendant's Exhibit C). The plaintiffs letter advised that she planned to move to Morristown as of August 15, 1998. The defendant's response was to file the present motion on May 28, 1998 wherein the defendant moved to enjoin the plaintiff from removing the minor child from the New Canaan/Stamford area until further order of the court.

On June 23, 1998, This motion was granted in that:
"The parties are ordered to maintain the status quo until farther court order...."

Hearing was ordered to be held on July 29, 1998 at which time the court vacated any injunction as it applied to the plaintiff and scheduled the hearing to resume on August 21, 1998. .

The Supreme Court decision Ireland v. Ireland , 246 Conn. 413 was officially released August 18, 1998 deciding an appeal of the trial court's denial of the plaintiff's motion seeking permission to relocate with her minor son to California and its granting of the defendant's motion to enjoin and restrain the relocation. The trial court had placed the burden on the plaintiff custodial parent to prove that relocation would be in the best interest of the child.

In Ireland, pursuant to the parties' agreement that was incorporated into the dissolution decree,

> "...the court awarded joint custody of their minor son to the parties with primary physical custody to the plaintiff." Id., p.415

The Ireland case holding is:

> "In summary, we hold therefore, that a custodial parent seeking permission to relocate bears the initial burden of dernonstrating, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, and (2) the proposed location is reasonable in light of that purpose. Once the custodial parent has made such a prima facie showing, the burden shifts to the

> noncustodial parent to prove, by a preponderance of the evidence, that the relocation would not be in the best interests of the child."

In an oral ruling from the bench, this court found that the plaintiffs move was for a legitimate purpose and that the proposed location is reasonable in light of that purpose.

The defendant then proceeded with additional evidence to attempt to prove, by a preponderance of the evidence, that the relocation would not be in the best interests of the child.

The Ireland decision again stated the basic law 46b-56(b) that the bests interests of the child must always govern decisions involving custodial or visitation matters.

The trial court in Ireland relied on D'Onofrio v. D'Onofrio, 144 N.J. super. 200, aff d. 144 N.J. Super. 352 (App. Div. 1976) which the Appellate Court adopted in Ireland v. Ireland, 45 Conn. App. 427 in enumerating the factors.

> "(1) advantages of the move in terms of its likely capacity to improve the general quality of life for the custodial parent and child; (2) motivation or good faith of the custodial parent in desiring relocations, specifically, if interference in noncustodial parent's visitation or relationship is a factor in the move; (3) likelihood of custodial parent to comply with visitation orders necessitated by relocation; (4) good faith or motivation of noncustodial parent in resisting relocation; and (5) whether, if relocation is allowed, there is a realistic opportunity for a visitation schedule that will provide an adequate basis for preserving and fostering the parental relationship with the noncustodial parent." Id., pp 429-430

The Supreme Court then concluded:

> "...that in relocation cases, it is not only proper to consider the interests of the family unit as a whole, including the independent interest of the custodial parent, but it is necessary to a determination of the child's best interest. Id., p. 431

The Supreme Court then replaced the D'Onofrio criteria by adopting the factors set forth in Tropea v. Tropea, 87 N.Y. 2d. 727, 665 N.E. 2d. 145 (1996) now addressed by this court.

1. Each parent's reasons for seeking or opposing the move. The court has found that the plaintiff has proven earning capacity as a salesperson. The court finds that her greater economic opportunities are in this area of business activity rather than in social work. It is correct that the defendant will not have the weekday contacts with his son that he has enjoyed. As pointed out in Ireland at p. 434:

> "...less frequent but more extended visits over summers and school vacations would be equally conducive, or perhaps even more conducive, to the maintenance of a close parent-child relationship,..."

2. The quality of the relationships between the child and the custodial and noncustodial parents. There is no doubt in the court's mind that both parties are loving, caring parents.

3. The impact of the move on the quantity and quality of the child's future contact with the noncustodial parent has been commented on in #1 above. The defendant cites an episode that occurred on August 25, 1993 in Morristown when the defendant called plaintiff asking to stop by plaintiff's home to see his son's room or at least see his son. The plaintiff refused. The defendant never called in advance although he knew at least 24 hours earlier he would be in Morristown to visit the neighborhood public school available to the son. The plaintiff characterized this call from a phone booth five minutes from the plaintiff s home as lacking respect for her. The defendant's lack of

consideration for the plaintiff's plans or convenience invited her refusal. This court does not infer an inflexible attitude by the plaintiff from this unfortunate and avoidable episode.

The court must comment on telephone contact between the defendant and his son. Since weekday direct contacts will be greatly decreased, it becomes more important for the father to be able to speak to his son on the telephone. A designated time is necessary so the child may expect the call and can plan other activities around receiving the call. The child will learn respect from his parents by example. By answering the calls, the child will come to understand civility and respect for both by example. By answering the calls, the child will come to understand civility and respect for both parents.

4. The degree to which the custodial parent's and child's life may be balanced economically, emotionally and educationally by the move.

The court has found the move to be economically valid. She has already demonstrated an earning capacity greatly in excess of $40,000 earned as a social worker. She also is mindful of the time limited alimony she is currently receiving. Delay in restoring her business career is not in her best interests nor can it be in the family unit's best interest.

Her sister, brother-in-law and their six year old son live in Morristown, her only family in the area. The parties' son and his cousin are close in age and interests. Through his cousin, the boy has met several new playmates. The plaintiff has no family in Connecticut. The defendant's parents spend six months a year in Connecticut and while here have frequent contact with their grandson. This can continue with weekend visits. The defendant has remarried and has an 18 month old son. ' The Court does not find that the plaintiff's move should be enjoined because of these facts. The court notes that neither D'Onofrio nor Tropea encountered such a situation.

The parties' child appears to have adequate educational opportunity whether it be in Connecticut or New Jersey.

5. The court finds that it is feasible to preserve the relationship between the defendant and his son with a suitable visitation arrangement including frequent weekends, summer vacation, school and holiday vacations and frequent telephone contact. The court includes family gatherings by the i paternal grandparents and by the defendant's siblings as desirable.

6. The court is not convinced that the hostility will increase due to the plaintiff's move. As commented on by the court in 4 1 and #3 above, civility, mutual respect and traditional politeness toward one another can only reduce any hostility.

The defendant's present wife has injected herself into the parties' custody matters by entering the plaintiffs erstwhile living quarters in New Canaan without the landlord's permission, taking pictures, removing a card (Defendant's Exhibit A) addressed to him and destroying the envelope which contained the note all in order "to help our case." Further, threatening to call the police when the plaintiff arrived at the defendant's home with the parties' son wasn't helpful. The post trial brief filed by the minor's attorney urges the plaintiff to *try* to get along with the defendant's current wife. The court's view is that the defendant's current wife should be included in the admonition.

The court has concluded that the defendant has not shown that the child's removal to New Jersey is not in his best interest. The defendant's motion is denied.

_____ , J.

Table 1 Unreported Decisions on Parental Relocation (Post Judgment)

Unreported Cases	
	Orders
Decarli v. Decarli, No. FA98 035 44 20S (Oct. 11, 2001), 2001 Ct. Sup. 14040, 2001 WL 1331736, 2001 Conn. Super. LEXIS 2964.	1) Defendant's Motion to Enjoin (while not procedurally correct under the normal standards of injunction, but clearly correct in intent (in light of the existing family relations statutes Judicial precedent and judgment in the captioned matter) is granted. 2) The plaintiff wife may not residentially relocate the minor children outside of any area further than fifteen miles. Absent prior court approval, at her initiative, plaintiff may take no action to relocate in a way which would change the children's current school assignments And the natural progression through that system. 3) Absent defendant's written agreement, the children may not be taken out of Connecticut. in any manner, or at any time, which would result in a absence from school.
McDaniel v. McDaniel, No. FA99-0498678S (Aug. 16, 2001), 2001 Ct. Sup. 12289, 2001 WL 1132148, 2001 Conn. Super. LEXIS 2416.	"In performing its balancing act regarding the best interest of the child, the court has considered the burden of proof standards in Ireland. The court finds that the decision of the plaintiff wife to relocate to Kentucky, nearer her family, is for a legitimate purpose. The court understands the personal wants and needs of the plaintiff to feel safe and secure in residing with a sibling closer to her extended family. The proposed move with Jacob requires the court, however, to determine the best interest of the child, not the emotional and psychological needs of his mother. In determining whether the plaintiff's move to Kentucky is reasonable in light of that purpose, the court finds that the plaintiff intends to move to Kentucky without a job. She further failed to investigate specific educational opportunities for Jacob in the school district where he will be educated. The plaintiff also testified that she intends to seek future employment as a nurse. The plaintiff failed to present evidence that she has a sufficient high school record, and/or meets the admission standards for acceptance into a nursing program in proximity to her proposed residence in Kentucky, Connecticut or any other location. The court concludes that the plaintiff failed to meet the second prong of the Ireland test. Even if the Ireland standard of proof test applies to the present controversy, the defendant, based upon the testimony and documentary evidence, has convinced the court that it is not in the best interest of Jacob to relocate to Kentucky with his mother.
Lawson v. Darby, No. FA 99-0721664S (Jun. 21, 2001), 2001 Ct. Sup. 8298, 2001 WL 823297, 2001 Conn. Super. LEXIS 1731.	"Although this case raises many of the issues raised in the landmark case of Ireland v. Ireland, 246 Conn. 413 (1998), it presents a different factual pattern because the parties were never married and no custody order has ever been made with respect to the child. Accordingly, the burden shifting requirements set forth in Ireland are not applicable to this case."